

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 400 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT

Versus

CHHOTUBHAI KAYABHAI PATEL

Appearance:

1. Second Appeal No. 400 of 1980
MR KP RAVAL, AGP for appellant Nos.1-3
MR SURESH C SHAH for SN SHELAT for respondent No. 1
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CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 07/09/2001

C.A.V. JUDGEMENT

This appeal by the appellants-original defendants of Civil Suit No.122 of 1974 has been filed against the judgment and decree dated 30-6-1980 passed in Regular Civil Appeal No.105 of 1970 by the learned District

Judge, Valsad whereby the learned Judge, while allowing the said appeal, has reversed the judgment and decree dated 27-10-1978 passed by the learned Civil Judge (S.D.), Navsari, in Civil Suit No 122 of 1974.

2. The brief facts are as under:

2.1 The respondent-original plaintiff, resident of Masa, Taluka Gandevi, District Valsad, applied before the Collector, Valsad for granting him agricultural land at the Sim of Village Masa for the purpose of coconut plantation. Said application was allowed by the Collector, Valsad with certain conditions and plaintiff was granted 20 acres of land out of Survey No.1882 for coconut plantation by the order dated 10-6-1969 and he was ordered to pay occupancy price at the rate of Rs.50/-per acre and entry to that effect was made as mutation entry No.613 dated 10-7-1969 by the concerned authority and possession thereof was also handed over to him by the defendant No.2 after carrying out necessary formalities. Thereafter, huge amount was spent towards developing the land for the purpose of coconut plantation. Meanwhile, some of his rivals made application before the authority and, therefore, Deputy Secretary, Revenue Department, State of Gujarat, after enquiry, passed an order under Sec.211 of the Bombay Land Revenue Code on 30-11-1973 cancelling the order passed by the Collector dated 10-6-1969 granting 20 acres of land to the plaintiff which fact came to the knowledge of the plaintiff on 30-12-1973. A notice under Sec.80 of the Code of Civil Procedure was served by the plaintiff on the defendant and thereafter, a suit being Regular Civil Suit No.9 of 1994 was filed. However, said suit was withdrawn by him with a liberty to file afresh on technical reason. Thereafter, a suit being Regular Civil Suit No.122 of 1974 was filed by him for declaration that the order passed by the defendant No.1 was illegal, ultra vires and mala fide and also for permanent injunction restraining the defendant from interfering or taking possession of the suit land from him through their servants, agents, etc.

2.2 The defendants resisted the suit of the plaintiff by filing written statement at Ex.17 mainly contending that the possession of the land in question was given to the plaintiff in the month of May, 1972 and since objections were received by the authority against granting of suit land to the plaintiff, an inquiry was started. It was contended that the plaintiff did not spend any amount for developing the land because after having received the possession, within no time, as

complaints were received, inquiry was started by the authority and thereafter order granting land was cancelled by the Deputy Secretary. It was further contended that the plaintiff, being Deputy Sarpanch and in charge of the Panchayat, represented the Collector, Valsad, that there was no objection for the Gram Panchayat in granting said land to the plaintiff (himself), in fact, no resolution to that effect was passed by the Gram Panchayat and suppressing this fact, the plaintiff issued a certificate in his own favour as the Sarpanch of the Gram Panchayat. It was further contended that the plaintiff misused his power as Sarpanch in charge by giving opinion for his own benefit and by this way, he misled the authority by fraud and misrepresentation and when the people of the Village came to know of it, they raised objection that as the land in question was required for the Village site, the question that only his enemy raised the objection was not correct. Therefore, a notice under Sec.211 of Bombay Land Revenue Code was served on the plaintiff by the Government on 25-6-1973. He filed reply against the notice on 5-7-1973 and he was heard through his advocate. After giving him opportunity of hearing, Deputy Secretary to the Government set aside the order passed by the Collector and plaintiff was informed accordingly. It was further contended that there was no delay on the part of the Government because the Government took action against the plaintiff immediately on coming to know of the fraud having committed by the plaintiff with the defendant No.2. Ultimately, the defendant requested to dismiss the suit.

2.3 The learned Trial Judge raised issues at Ex.22 and also led oral evidence of the parties. At the end of trial, learned Trial Judge dismissed the suit of the plaintiff. Being aggrieved and dissatisfied, he filed Regular Civil Appeal No.105 of 1970 in the Court of District Judge, Valsad at Navsari. The learned Appellate Judge held that the revisional power exercised by the Deputy Secretary under Sec.211 of the Bombay Land Revenue Code was not within reasonable time. Taking into consideration various aspects of the matter, appeal was allowed by the Appellate Judge and judgment and decree passed by the Trial Court were set aside against which, present Second Appeal is preferred.

3. Heard learned A.G.P, Mr.K.P.Raval for the appellants and learned advocate, Mr.Suresh C. Shah for the respondent.

4. Mr.K.P.Raval has mainly argued that the order passed by the Deputy Secretary, Revenue Department,

Ahmedabad on 30-11-1973 under Sec.211 of the Code is legal and is within jurisdiction. According to him, the power has been exercised by the Deputy Secretary within reasonable time. Drawing my attention towards relevant facts from the record and proceedings and judgments of both the Courts, he has argued that reasonable time shall start from the date of knowledge of the fraud committed by the plaintiff on the Government by misusing his power as Sarpanch in charge and producing concocted certificate of the resolution having been passed by the Panchayat.

4.1 He has drawn my attention towards the case reported in 1998(3) G.L.R. 2139 wherein this Court has held at head note as under:

"Secs.43 & 73AA--Bombay Land Revenue Code, 1879
(V of 1879)--Sec.211--Power of revision must be exercised within a reasonable time where no time is prescribed--Sec.73AA has laid down the limit of 3 years within which the power can be exercised--Both rules violated--Petition allowed."

Relying upon the above, he has argued that the lower Appellate Court ought to have held that the plaintiff has committed fraud and played mischief in sending No Objection Certificate Ex.36 to the Government as he himself was in charge of Sarpanch and it is mainly based on this certificate, land in question was allotted to him.

5. Whereas Mr.Suresh C. Shah has argued that the judgment delivered by the Appellate Court is just, proper and legal and this Court is having limited jurisdiction to interfere with the same. Relying upon various authorities, he has contended that the Deputy Secretary ought to have exercised the power within reasonable time, that is to say, within one year from the date of allotting the land. However, in this case, he has exercised the same after a period of four years. Meanwhile, a huge amount has been spent by the plaintiff towards developing the land in question and, under these circumstances, this Court should not interfere with the judgment of the Appellate Court.

5.1 He has drawn my attention towards the case reported in 10 G.L.R. 992 wherein it was held at head note as under:

"Secs.65,211--No period of limitation prescribed

under Sec.211 but determination under this section must be exercised in reasonable time in view of Sec.65--Reasons for order must also be indicated."

It has been held by the Apex Court in para 12 as under:

"It is true that there is no period of limitation prescribed under Sec.211 of the Bombay Land Revenue Code but it is plain that this power must be exercised in reasonable time and the length of the reasonable must be determined by the facts of the case and the nature of the order."

5.2 He has also drawn my attention towards the case reported in 12 G.L.R. 156 wherein the Court has held in para 14 as under:

"The State Government cannot keep the sword hanging on any such person in respect of his property by choosing to act and revise the order at its sweet will which may be after seven years as it is sought to be done in this case. If on the other hand any such order was passed against the appellant by the Commissioner, he would have been obliged to move the State Government for reversal thereof, if permissible under Sec.211 of the Code, within three months or so at any rate he would have to file a suit within one year under Art.14 of the first Schedule of the Indian Limitation Act and cannot wait till the State Government decides anything in that matter. In other words, the Legislature has thought it proper to provide for one year as a period within which any party affected by such act or order passed by the officer of the Government could file a suit and there is no reason why the State Government also should not do so, if it were so affected by any such order such as the order of the Commissioner in the present case by revising the same under Sec.211 of the Bombay Land Revenue Code. The maximum period, it may be able to claim cannot be more than a year from the date of the Commissioner's order, and to say that it can do so after any length of time viz. after about seven years or so, cannot be called at all reasonable."

5.3 He has also relied upon the case reported in 17 G.L.R. 464 wherein the Court has held at paras 9 and 10 as under:

"Though Sec.35 of the Act confers upon the State Government revisional jurisdiction which it may exercise "at any time" it should exercise it within a reasonable time. What is a reasonable time depends upon the facts and circumstances of each case. Merely because Sec.35 or any other section of the said Act does not prescribe any period of limitation and provides that it may be exercised "at any time" it does not mean that it can be exercised after any length of time."

Relying upon the above judgments, learned counsel for the respondent has submitted that in these circumstances, as held by the Court, reasonable time shall be of one year.

6. Keeping in the mind the above aspects of the matter and also the law laid down by this Court on this point, it is clear from Sec.211 of Bombay Land Revenue Code that though no time limit has been prescribed, same has been interpreted by various Courts. The sum and substance are that power shall be exercised within reasonable time. What is reasonable time is dependent upon facts and circumstances of each case. It cannot be one year or four years. But as decided by various Courts, it should be reasonable one. Therefore, what is required to be seen in this matter is whether the power exercised by the Deputy Secretary in cancelling the order passed by the Collector was within reasonable time or not.

7. It was held by the learned Appellate Court that the power exercised by the authority is after a period of four years. Relying upon 12 G.L.R. 156, it has held that maximum period which may be able to claim cannot be more than a year from the date of order passed by the Collector and when the revisional jurisdiction was exercised after a period of four years, it cannot be said that it was exercised within reasonable time and hence, order is null and void and power was exercised without there being any reason for doing so. Though it was stated that the authority has passed the order after a period of four years, no discussion was made by it in arriving such a conclusion. But the Trial Court has discussed the above issue at length in its judgment at pages 9 and 10 and say of the plaintiff has not been accepted.

8. For reversing the judgment and order of the Trial Court, the Appellate Court has not discussed the point or has not taken into consideration the evidence on record and jumped to the conclusion that revisional power has been exercised by the authority after a period of four years and, therefore, it was not within reasonable time as held by various Courts for which, following facts are required to be kept in mind:

8.1 The land in question was granted by the Collector to the plaintiff on 10-6-1969 and mutation entry to that effect was made in the Revenue Record on 10-7-1969, but actual and physical possession thereof had not been taken by the plaintiff till 16-5-1972 and hence, naturally Village people might not be knowing about the said allotment. They came to know of it for the first time after 16-5-1972 and, therefore, they sent applications to the Government raising objections and enquiry was started. Thereafter, a notice was issued to the plaintiff on 25-6-1973. A reply was received by the Government on 5-7-1973 and thereafter, affording full opportunity of hearing to the learned advocate for the plaintiff, the Government set aside the order passed by the Collector on 30-11-1973.

9. It can be seen here that the revisional power has been exercised by the Government within one and half years and not after four years as held by the Appellate Court. If chronology of events is seen, then it would be clear that the Government had started investigation immediately on receiving the applications from Village people and hence, it cannot be said that there was any delay worth the name on its part. It is undisputed that the plaintiff was Deputy Sarpanch for a period of seven years and at the time of sending No Objection Certificate to the Collector, he was In-charge Sarpanch of Village and during that period, he has applied to Collector demanding the land in question and got issued No Objection Certificate to that effect. It appears that though no resolution was passed by the Panchayat for allotting the land to the plaintiff, he had issued a certificate in his capacity as Sarpanch to the effect that the Panchayat had no objection in allotting the said land to the applicant. Hence, a fraud and or misrepresentation has been committed by the plaintiff on the Government for his own benefit by misusing the post and position. In these circumstances, what is required to be taken into consideration for the purpose of deciding this appeal is the calculation of reasonable time. In case of fraud or misrepresentation, the

reasonable period can be calculated from the date of knowledge. In this case, the Village people came to know of the possession of the land having taken by the plaintiff in May, 1972 and immediately they have made complaints and Government has started taking action in the matter from the date of knowledge, and, therefore, the conclusion of the Appellate Court that the power has been exercised after a period of four years is not based on any evidence on record. He has reversed the judgment of the Trial Court to this fact on the basis of no evidence and, therefore, certainly this Court should go into it. Here is the plaintiff who has misused his post and position by designing the things in such a manner that he can ultimately succeed in his goal. For that, he had issued certificate during the period he was in charge of Sarpanch and though within no time entry has been mutated in the revenue record, he has not taken possession of the suit land for a period of three years. In these circumstances, according to me, observations of the Appellate Court that power has been exercised by the authority after a period of four years is not reasonable one based on facts or it can be said that the observations are based on no evidence and, therefore, in my opinion, the judgment of the Appellate Court is required to be interfered. Though it was argued before the Appellate Court that huge amount has been spent by the plaintiff for developing the land, no satisfactory evidence to that effect is produced on record to substantiate the same.

10. Keeping in mind the law laid down by various Courts relied upon by the learned advocates for the respective parties that the reasonable time is based on facts and circumstances of each case, it appears that the power has been exercised by the authority within reasonable time and no illegality has been committed by the Deputy Secretary to the Government in exercising his power. Hence, the Second Appeal deserves to be allowed and judgment and decree passed by the lower Appellate Court require to be set aside.

11. In view of the above, this Second Appeal is allowed. Judgment and decree dated 30-6-1980 passed in Regular Civil Appeal No.105 of 1978 by the District Judge, Valsad are set aside and judgment and decree dated 27-10-1978 rendered in Regular Civil Suit No.122 of 1974 by the learned Civil Judge (Sr.Divn.), Navsari are restored. There shall be no order as to costs.

(R.P.DHOLAKIA, J.)

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